

COMMONWEALTH OF KENTUCKY  
MINE SAFETY REVIEW COMMISSION  
ADMINISTRATIVE ACTION NO. **03-MSRC-010**

COMMONWEALTH OF KENTUCKY,  
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

**FINAL ORDER**

**v.**

**CHARLES ROSE**

RESPONDENT

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant, Office of Mine Safety and Licensing (OMSL) and Respondent Charles Rose and the members of the Commission having reviewed the Settlement Agreement filed on April 12, 2005 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if reproduced herein in full as a material part of this **FINAL ORDER**. A copy is attached hereto;
3. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the

Respondent not arising from the factual basis of the original violation and resolved herein.

4. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13);
5. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
6. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 14TH day of April 2005.

  
MINE SAFETY REVIEW COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was mailed, by certified and regular mail, postage pre-paid to the following this 15 day of April 2005:

MARCO M. RAJKOVICH, JR.  
MICKEY T. WEBSTER  
WYATT, TARRANT & COMBS, LLP  
250 WEST MAIN STREET, STE. 1600  
LEXINGTON KY 40507-1746  
Attorneys for Respondent

And by messenger mail to:

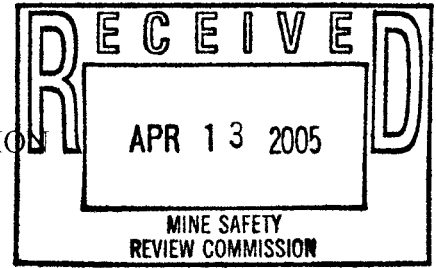
Hon. Tony Oppegard  
Office of Mine Safety and Licensing  
1025 Capital Center Drive  
Frankfort Ky 40601

And the original shall be kept on file:

Mine Safety Review Commission  
132 Brighton Park Blvd.  
Frankfort Ky 40601

  
Bryon Alan Thompson  
General Counsel & Hearing Officer  
Mine Safety Review Commission

KENTUCKY MINE SAFETY REVIEW COMMISSION



KY. OFFICE OF MINE SAFETY & LICENSING )

Complainant )

v. )

) Administrative Action No. 03-MSRC-010

CHARLES ROSE )

Respondent )

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**SETTLEMENT AGREEMENT**

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Come the Complainant, the Kentucky Office of Mine Safety & Licensing (“OMSL”),<sup>1</sup> and the Respondent, Charles Rose (“Rose”), through counsel, and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the final resolution of this action against him,<sup>2</sup> and the cancellation of the hearing that is currently scheduled for April 14, 2005, Rose hereby agrees to the following:

1. The **PROBATION OF HIS UNDERGROUND MINE FOREMAN’S CERTIFICATE (# A-105-94) FOR A PERIOD OF SIX (6) MONTHS**, effective upon the signing of this Settlement Agreement by both parties.

2. During this 6-month probationary period, Rose shall comply with all state and federal

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<sup>1</sup> This action was filed on July 18, 2003, by the Kentucky Department of Mines & Minerals, the predecessor to OMSL.

<sup>2</sup> OMSL and Rose are filing a joint motion with the Mine Safety Review Commission (“the Commission”) to approve the Settlement Agreement and dismiss this action.

mine safety laws and regulations. The willful violation by Rose of any of said laws or regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke his underground mine foreman's certificate for the remainder of the 6-month probationary period. If the circumstances warranted, OMSL would also retain the right to file a separate action with the Commission seeking other penalties against Rose for his actions.<sup>3</sup>

3. Within 45 days of the effective date of this Settlement Agreement, Rose must take **FOUR (4) HOURS OF SPECIAL SAFETY TRAINING** from OMSL at either its Martin or Pikeville District office.<sup>4</sup>

4. This Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1 (5).<sup>5</sup> Any future adjudication against Rose by the Commission - regarding a separate alleged offense - will be deemed a "subsequent offense" as defined at 805 KAR 8:010, Section 1 (13).

Rose states that he has carefully read this Settlement Agreement, that he has carefully considered the Agreement prior to signing it, and that he understands and agrees to its terms and provisions.

OMSL and Rose acknowledge and agree that there are no other promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those

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<sup>3</sup> In either event, Rose would have the right to a hearing before the Commission on the allegations against him.

<sup>4</sup> Said special safety training is in addition to any annual refresher training or other safety training that Rose is legally required to take.

<sup>5</sup> However, Rose denies the allegations set forth in paragraph 11 of the Complaint filed against him. Moreover, Rose denies that he violated any Kentucky mining law or regulation.

expressly set forth in writing herein.



CHARLES ROSE  
624 Mudlick Branch  
Prestonsburg, Kentucky 41653



PARIS L. CHARLES  
Executive Director  
Ky. Office of Mine Safety & Licensing  
P.O. Box 2244  
Frankfort, Kentucky 40602

4-11-05  
DATE

4-14-05  
DATE

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Settlement Agreement was mailed this  
13TH day of APRIL, 2005, to Mickey T. Webster, Attorney-at-Law,  
WYATT, TARRANT & COMBS, 250 West Main Street, Suite 1600, Lexington, Kentucky  
40507.



TONY OPPEGARD  
General Counsel

KY. OFFICE OF MINE SAFETY & LICENSING